

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
ALBUQUERQUE DIVISION**

GENERAL PROTECHT GROUP, INC., f/k/a
ZHEJIANG DONGZHENG ELECTRICAL,
CO.; G-TECHT GLOBAL CORPORATION;
SECURELECTRIC CORPORATION;
WAREHOUSE-LIGHTING.COM LLC;
CENTRAL PURCHASING, LLC; and
HARBOR FREIGHT TOOLS USA, INC.,

Plaintiffs,

v.

LEVITON MANUFACTURING CO., INC.,

Defendant.

Civ. No. 10-cv-01020-JB-LFG

**DEFENDANT LEVITON MANUFACTURING CO., INC.’S
MOTION TO DISMISS PURSUANT TO THE FIRST TO FILE RULE**

Defendant Leviton’s Manufacturing Co., Inc. (“Leviton”) moves under Federal Rules of Civil Procedure 12(b)(1), 12(b)(3), and/or 12(b)(6) to dismiss this action based on the first to file rule.¹ Leviton filed an action involving the same parties and the same issues in the Northern District of California (“California Action”) nearly two months before Plaintiffs filed this action. Accordingly, this Court should apply the first to file rule and dismiss this case in favor of the California Action. Although practical considerations can warrant departure from the first to file rule, those practical considerations do not warrant departure from the rule in this case and actually favor following the rule.

¹ Leviton files this motion in lieu of filing an answer to the Complaint and will answer the Complaint, if necessary, following a ruling on this motion.

The grounds for the Motion are set forth in the concurrently filed brief and the Declaration of Shaun R. Snader. A proposed order has been submitted separately to jobproposedtext@nmcourt.fed.us.

Leviton contacted Plaintiffs to determine whether they will oppose this motion, and Plaintiffs stated that they will oppose this motion.

Dated: November 24, 2010

Respectfully submitted,

/s/ Emil J. Kiehne

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CERTIFICATE OF SERVICE

I hereby certify that on November 24, 2010, I filed the foregoing document electronically through the CM/ECF System, which caused the following counsel for the parties to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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